

252. " The practice of burning the heretic alive was thus not the creature of positive law, but arose generally and spontaneously, and its adoption by the legislator was only the recognition of a popular custom." ¹ " Confession of heresy became a matter of vital importance, and no effort was deemed too great, no means too repulsive, to secure it. This became the center of the inquisitorial process, and it is deserving of detailed consideration, not only because it formed the basis of procedure in the Holy Office, but also because of the vast and deplorable influence which it exercised for five centuries on the whole judicial system of continental Europe."² In the second half of the twelfth century burning had become, by custom, the usual punishment for heretics. The purpose was universally regarded as right and pious, and the means was thought wise and correct. Therefore the whole procedure went forward on a course of direct and consistent development.³ It was first decreed in positive law in the code of Pedro II, of Aragon, in 1197. In the laws of Frederick II, in 1224, the punishment was death by burning or loss of the tongue. In 1231, in Sicily, burning was made absolute. In 1238 the stake was made the law of the empire against heresy. In 1270 Louis IX made it the law of France.⁴ "Dominic and Francis, Bonaventura and Thomas Aquinas, Innocent III and St. Louis, were types, in their several ways, of which humanity, in any age, might well feel proud, and yet they were as unsparing of the heretic as Ezzelino da Romano was of his enemies. With such men it was not hope of gain or lust of blood or pride of opinion or wanton exercise of power, but sense of duty, and they but represented public opinion from the

thirteenth to the
 seventeenth century." ⁵ That is to say, that the
 virtues of the
 individuals were overruled by the vices of the mores
 of the age.
253. The shares of the church and the masses.
 The steps of
 the process by which the Christian church was
 made an organi-
 zation to enforce uniformity of confession by bodily
 pain, that is,

¹ Lea, *Inquis.*, I, 222.

² *Ibid.*, 410.

⁸ Hansen, *Zauberwahn*, etc., 223.

* Lea, *Inquis.*) I, 220 j Hansen, *Zauberwahn*^ etc., 223.

⁵ Lea, *Inquis.*, I, 234.